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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,197	10/10/2000	Carl C. Kah III	P/3426-7 RE	6102
2352	7590	04/22/2010	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				HWU, DAVIS D
ART UNIT		PAPER NUMBER		
3752				
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04/22/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/686,197	KAH, CARL C.	
	Examiner	Art Unit	
	Davis Hwu	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 March 2010.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,4-28,30 and 31 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 16-19 and 21-28 is/are allowed.

6) Claim(s) 1,4-15,20,30 and 31 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application

6) Other: _____

Response to Amendment

1. Applicant's response of March 8, 2010 have been entered and fully considered.

2. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

3. Claims 1, 4-11, and 20 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

During the prosecution of application 08/405033 (Patent 5,826,797) an amendment was filed August 8, 1996 adding the following limitation to independent claim 1 and including such limitation in independent claim 12: "sealing means surrounding the discharge end of a water passage formed in said nozzle housing; said sealing means including a seal member..." According to Applicant's arguments accompanying this amendment, this change occurred to more specifically define the seal of the instant invention from the prior art. Since this limitation was added in response to a rejection of the claims, the removal of such limitation is considered to be recapture.

During the prosecution of application 08/405033 (Patent 5,826,797) an amendment was filed January 15, 1997 adding the following limitation to independent claim 1: "means for retaining said nozzle selection sleeve in place". The next action was a Notice of Allowability. Since this limitation was added in response to a rejection of the claims, the removal of such limitation is considered to be recapture even though that limitation is not specifically mentioned by Applicant or the examiner.

During the prosecution of application 08/405033 (Patent 5,826,797) an amendment was filed August 8, 1996, that added new claims 23-26 that were said to be limited to the combination of the nozzle housing and riser where the nozzle selection is mounted to surround the nozzle housing to rotate therewith and relative thereto. Such combination was deemed to make the claims allowable. New claims 22-30 in this reissue application are deemed to be broader than patented claims 16-19 (which relate to the claims that were numbered 23-26 during the prosecution of application 08/405033) because they do not call for the nozzle selection to surround the nozzle housing and riser. Since this limitation was added in response to a rejection of the claims and deemed to be allowable, the removal of such limitation is considered to be recapture.

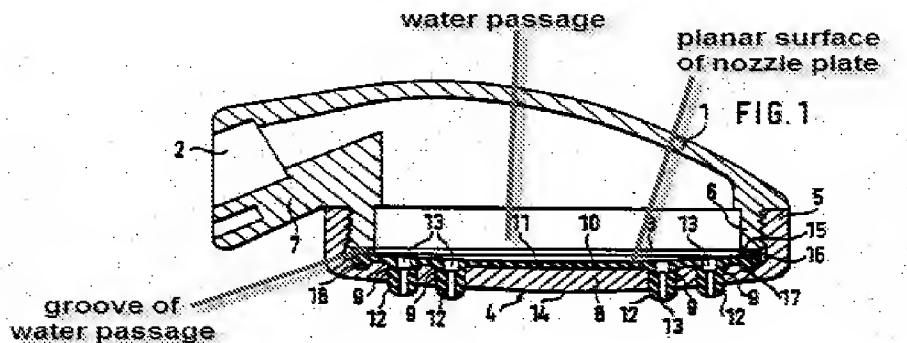
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grassberger in view of Meshberg.

Grassberger discloses a sprinkler comprising a rotatable nozzle housing 1 having a water passage and a central axis about which the housing rotates; a nozzle plate 11 slidably fitting into a groove formed into the water passage in the nozzle housing 1 and

having a planar surface (see Fig. 1) below, wherein the nozzle plate is accessible so as to be removable by removing device 4 from the housing in which the removal process can take place while the sprinkler is operational.



Meshberg teaches a dispensing device comprising a housing 15 having a fluid passage, a manually adjustable sleeve 17 having an inner surface and circumferentially spaced nozzles, and a seal (o-ring) 26 surrounding the discharge end of the fluid passage and dimensioned to continuously bear against the inner surface of the rotatable sleeve 17 (Figure 4) to prevent fluid leakage of the fluid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Grassberger by incorporating a seal member to surround the water passage and being dimensioned to continuously bear against the planar surface to prevent leakages as taught by Meshberg. Forming a tapered recess as recited in claim 14 would have been a matter of design choice since the seal will still seat properly to prevent leakages with such a modification.

6. Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. in view of Meshberg.

Walker et al. discloses a sprinkler comprising: a rotatable housing 90 having a water passage therein; a nozzle plate (the combination of sleeve 116 and its flat top portion), at least one orifice 118 disposed in the nozzle plate to be aligned with the water passage as recited, the nozzle plate fitting into the water passage and having a planar surface; and a riser as recited in claim 15. Providing a groove in the water passage for the nozzle plate would have been a matter of design choice since the nozzle plate will still sit properly in the water passage with such a modification. Walker et al. also discloses a cap 24 which can be removed for convenient service or maintenance access to various parts of the sprinkler and the plate can be removed while the sprinkler is operational if necessary. Meshberg teaches a dispensing device comprising a housing 15 having a fluid passage, a manually adjustable sleeve 17 having an inner surface and circumferentially spaced nozzles, and a seal (o-ring) 26 surrounding the discharge end of the fluid passage and dimensioned to continuously bear against the inner surface of the rotatable sleeve 17 (Figure 4) to prevent fluid leakage of the fluid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Walker et al. by incorporating a seal as recited to prevent leakages as taught by Meshberg.

Claim Rejections - 35 USC § 102

7. Claims 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kah, Jr.

Kay, Jr. shows a sprinkler comprising a riser assembly a rotatable nozzle housing having a flow passage formed therein a drive shaft 104 as recited, and a nozzle plate 196 including an orifice as recited.

Response to Arguments

8. Applicant's arguments filed March 8, 2010 have been fully considered. The art rejection of claims 1, 4-11, and 20-28 are withdrawn.

As stated above, the removal of such limitation is considered to be recapture.

Regarding claims 12-14, in the sprinkler of Grassberger, the top of the sprinkler is a relative term in that the sprinkler as shown in Fig 1 can be turned upside down and thus the section with the nozzle plate becomes the top of the sprinkler. Because the supporting plate 8 is always accessible, it can be removed at any time including when the sprinkler is operational. Also, the term "operational" does not necessarily mean that the sprinkler is in an operating state in which it is spraying water, since "operational" can also mean the sprinkler is working order and in state of readiness for spraying water.

Walker et al. discloses that the cam 120 can be removed, so it would have been obvious to one having ordinary skill in the art that various other parts including the nozzle plate would be removable for cleaning or replacement. Since the spray cap is accessible, it can be removed at any time including when the sprinkler is operational. The above comment on the term "operational" as state above also applies to the Walker et al. device. Regarding claim 31, the nozzle plate 196 is movable as recited (column 9, lines 15-18).

Allowable Subject Matter

9. Claims 16-19 and 21-28 are allowed.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis D. Hwu whose telephone number is 571-272-4904. The examiner can normally be reached on 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is

available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

/Davis D Hwu/
Primary Examiner, Art Unit 3752